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REMEDIES FOR LYNCH LAW.

ONE of the most encouraging symptoms in connection with mob law is the growing conviction that it must be suppressed if civilization is to continue in those regions where this backward tendency is most persistent. And of these signs of a better order of things, one of the most cheering is the tone of the local press on the subject. Decent journals of all shades of opinion throughout the country now join in the general demand that is being made for the recovery of the law. In other words, this most menacing evil of the times is no longer looked upon as a mere neighborhood affair with which the rest of the world ought not to busy itself. On the contrary, it is at last being recognized that the evil is one that involves the good name of the whole country. And there is yet another encouraging indication. While it is universally conceded that mob law of every description is to be put down with a stern hand, there is a growing disposition to view the subject in a less sectional and partisan spirit than formerly—that is to say, the people of the Southern States are becoming less and less hostile to external denunciations of a species of anarchy that strikes at the very foundation of organized society, whilst in other portions of the Union there is a perceptible recognition of the fact that there are conditions in some parts of the South not wholly unlike those prevailing in the English colonies in India and South Africa. And while, of course, there can never be any extenuation of “lynching,” a keener appreciation of the difficulties of the situation is everywhere apparent. To what extent this change of sentiment may be at-

tributed to our experiences with the denizens of the islands so recently dropped into the lap of the country it is difficult to tell.

So long as men believed, or professed to believe, that there was a natural and deadly war of races going on in the South, no amount of argument could convince them that not only was there never such a conflict, but that even to expect such a struggle would be to expect the impossible. No less hopeful is the somewhat altered view of the subject now everywhere noticeable in the Southern States, for it must be borne in mind that not a very great while ago not only could there be found newspapers of considerable influence that advocated the putting to death by mob law of persons accused of certain crimes, but even political leaders and ecclesiastical dignitaries not unseldom advocated the same sort of procedure. Now the question is no longer a sectional one, and men of intelligence and patriotism everywhere join in the demand that this relic of barbarism should be extirpated speedily.

The first step to be taken in the study of this form of anarchy is to get at the cause of it. Hence it is necessary to describe some of the social and political conditions prevailing in those portions of the South where "lynchings" are most frequent, for it must be borne in mind that these illegal executions are more frequent in some portions of the South than in others. It may also be desirable to get at the excuses offered for these lawless acts, to see how far they correspond with facts, to trace the influence of "lynchings," and so far as possible to discover whether there may not be a substitute for them. We are not discussing the prevalence of crime elsewhere. It is unfortunately too true that infractions of the law exist everywhere. At the same time it should be added that it is rarely the case for law-abiding citizens in any portion of the world to defend crimes of any description, least of all the crime of murder.

The cause originally assigned for lynching was the assault by black men upon white women. In some sparsely settled regions of the South, where the negroes far outnumbered the whites, this was the case.

ber the whites, the possibility of such outrages is a perpetual menace to every household; and, while extremely rare during the existence of slavery, these crimes appear to be on the increase in some quarters. That outrages of this description have done more than all other causes combined to retard the advancement of the black race since emancipation is unquestionably true. At the same time, the whole past history of the relations between the two races in America proves that this offense cannot be charged against the negroes as a race. In by far the greater number of cases the crime is committed by the more worthless blacks—ordinarily “strange niggers,” or members of that vagrant class of black proletariat that has sprung up since the great economic changes of recent years have transformed the South. For the misdeeds of these shiftless vagabonds a whole race is made to suffer. Lacking steady employment, and frequently too lazy to work even when employment is possible, these idle, vicious persons roam over the country, a prey to every brutal propensity. As a rule, their attacks upon women occur at certain seasons of the year in the rural districts, or in the outskirts of towns where there is no police protection whatever. When captured and tortured by mobs they ordinarily meet with stolid indifference whatever treatment they receive. The class to which they belong, moreover, never read the newspapers. Few of them know, indeed, what takes place fifty miles distant. Even if they do, the actions of the mob not only familiarize them with the crime which naturally arouses the indignation of men as no other crime can, but not infrequently tempts them to commit it. At the same time respectable colored persons, who are usually outspoken in their denunciation of such assaults, are made to feel that their race cannot get a fair trial in courts of justice. Thus a breach between the two elements of our population takes place, and confidence is destroyed where it ought to be cultivated.

From what has been said already it is scarcely necessary to add that, so far from extirpating the evil complained of, lynch law has actually increased the number of attacks upon

females. Judge Lynch, moreover, has meanwhile so extended his jurisdiction as to execute persons accused of all manner of crimes; for, so far from confining his executions to persons accused of crimes against women, he now puts to death those accused of all sorts of breaches of the law from murder to larceny.

Mob law having once been tolerated in certain cases, has now asserted itself in all kinds of cases, and the mob reasons that, if a negro can be lynched for ordinary offenses, "hanging is too good for him" where a woman has been assaulted. Behold, therefore, the rise of the practice of burning the accused at the stake in the presence of approving spectators, who vie with one another in devising means of torture! The quivering body of a dying wretch is frequently subjected to those indignities known among the less-developed Indian tribes, and the entire community is brutalized. Now if such deeds checked crime, elevated the criminal class, and were calculated to promote among the members of a community those sentiments of justice and mercy so essential to enlightenment, then indeed might the rest of the world tear a leaf out of the book of our jurisprudence and close the doors of their courts. But the experience of the human race is entirely opposed to any such theory. By an inexorable law violence begets violence. No earthly substitute therefore can be found for the duly ordained tribunals for the trial of offenders against the law. Once connive at the overthrow of the law in a particular instance, and the reign of anarchy begins.

One purpose of the criminal law is to prevent those acts of violence on the part of worthless negroes which are so well calculated to arouse the passionate indignation of all persons. To prevent such acts, provisions are made for the trial of the accused, and if he is found guilty, the severest punishment is meted out to him throughout the South. That such a penalty is deserved no one familiar with Southern conditions can possibly gainsay. And experience is fast convincing people everywhere that the best possible substitute for mob law is a return to the courts. What is of greater importance

still is the lesson that the honor and protection of women may far more wisely be left to the various organs of government than to lawless bands of murderers.

In assaults on women an unwillingness on the part of the victim to appear in court is often assigned as an excuse for mob law, and it is easy to appreciate this reluctance of the woman when it is recalled that the trial is thrown open to the public. To the experience already encountered must, under many present arrangements, be added the further misfortune of being obliged to tell her story of wrong to the court in the presence of a gaping crowd of spectators. But there is no reason why the criminal procedure could not be so altered as to exclude from such trials all persons save the parties and the jury. Indeed, such a change is demanded in the interests of mankind.

Where persons are lynched on charges of murder, arson, robbery, larceny, and similar offenses, they are almost invariably negroes, although it is unfortunately true that the whites are themselves not wholly free from such crimes. It is urged in defense of self-help in such cases that the courts of law fail to render speedy and accurate justice. The gross abuse of the right of appeal and of the pardoning power are also urged as extenuating circumstances. All this sounds strangely enough, however, when one remembers that throughout the South the white race and the political party to which most of its members belong are in control of all the machinery of government. Hence these and other facts ought to make the task of good citizens plain. They must at least make possible a clearer knowledge of prevailing conditions.

The cure for lynch law is to be sought in *preventive* rather than in *repressive* measures. This was the great lesson taught England by Sir Samuel Romilly and Sir James Macintosh, through whose influence the rude features of the English law were so materially improved. It is the great truth, moreover, experience has forced upon the medical profession. Instead of the ancient practices of bleeding and purging, physicians have made their greatest strides since

they have learned how to care for the public health by sanitation and other modes of preventing disease. In like manner experience has demonstrated that the growth of crime is to be checked, not so much by the *cruelty* and *severity* of the punishment, which was the great error of the Middle Ages, as by the *swiftness* and *certainly* of the punishment. These are not theories. They are facts demonstrated by the whole experience of mankind.

Among the preventives to crime education stands foremost, but to prove effective it must be of a far different type from that usually afforded the youth of both races by the public schools of the Southern States. The whole system of public instruction ought to be so reconstructed as to impart to both white and black children that technical and moral training of which they usually stand so much in need.

In this connection care must be taken to recognize the vast industrial changes that are taking place in the South. Entire sections which were wholly given over to agriculture a decade or two ago now feel the vitalizing influences of modern industry and witness the rise of new towns and cities. Whites and blacks have flocked to these rising municipalities to seek a more congenial atmosphere than that surrounding the moribund plantation, whilst those who have remained on the countryside suffer very often by reason of the absence of those social agencies which make life pleasant and inspiring. And it may yet be many years before one may see an efficient system of public instruction developed in such regions. Strange to say, even in the larger towns of the South, a free public library is a curiosity. Even where such an institution exists it is often the gift of an outsider. Fortunately, however, public sentiment is awaking to their importance in Southern towns, and libraries are on the way. There is no reason why something cannot be done to raise, in a similar manner, the standard of living in the backwoods; for much of the lawlessness of such communities may be directly traced to ignorance, idleness, and a natural craving for recreation, which should be properly directed. Suffering from the monotony of their existence, gangs of men and

boys frequently hail a lynching as a happy diversion from their sordid experiences. No less important is the need of a rural constabulary. A well-disciplined, mounted police force, composed, like that of Canada and South Africa, of responsible, sober men, would be a great gain to the country districts. Not only would such a force largely aid in the protection of women and children, but its members could also materially improve the country in other ways. There is no reason, for example, why they could not perform their police duties and also render services in connection with the roads and schools. In some remote portions of the South parents are naturally afraid to send their children to school, where the little ones must walk several miles, but the presence of mounted police would banish all fears. This force could also inspect the roads, arrest vagrants, and otherwise add to the convenience and security of the public. It was the old patrol of the South that did so much to preserve order.

Another point to be considered in connection with lynching has already briefly been referred to, and that is the lack of confidence some communities betray in regard to their criminal courts. This, surely, is a most disheartening sign; for in such communities men appear to feel a greater sense of security regarding the rights of property than those of the person. That there is often some show of reason for this deplorable skepticism is a fact beyond controversy. A little reflection may make the truth more obvious to those who will be surprised at this remark. In the first place, there is the very great distinction which exists not only between the laws defining crimes and property, but also between the methods of trial in the two sorts of courts. For while courts of civil jurisdiction have had their procedure greatly ameliorated through the influence of equitable principles, criminal tribunals still adhere to the technical rules of the common law. Therefore such tribunals have in many portions of the country retained the prolix and tortuous practice of the old English system, while the ease with which appeals may be made has had a tendency further to weaken popular confidence in the criminal courts. Unfortunately, moreover, the character of

the criminal judges has not always been such as to correct these impressions on the part of the public, and the disposition of the bar of some towns to turn over the whole criminal practice to a certain class of practitioners has not improved matters. The substitution of a judiciary elected by popular vote for a short term of years, for a judiciary elected or appointed for life or good behavior, has not been without its evils and dangers. The office has in many States become a political one, and thus we see attorneys endeavoring to have all their causes tried in the Federal courts. Legal education also stands sorely in need of elevation. In many parts of the South a bar examination is a perfect farce.

Another remedy for lynching may be discovered in the abolition of capital punishment in all cases save those of assaults upon women. This measure would probably lead to several good results. In the first place, convictions of white men accused of homicide are notoriously rare in those States where "lynchings" are most frequent. There murders are most frequent and human life cheapest. Would it not be wise, therefore, for such commonwealths to recognize the fact that juries are inclined to regard the death penalty as too severe a one for white men accused of homicide? By abolishing the punishment by death in such cases more convictions would unquestionably be secured and greater protection afforded life. Some punishment is better than none at all. Lynchers might then also be punished. The lighter the penalty the surer the prospect there is of securing a verdict for the State, unless, of course, it be in the case of assault. Nor should it be forgotten that the *vindictive* theory of punishment has now practically disappeared from the codes of most civilized states. But where murders are more frequent lynchings are more common, and death at the hands of a savage mob is the almost inevitable fate of every assailant of a woman. Then let such commonwealths confine the death penalty to assaults as the most expedient quality and scale of punishment for such offenses. And both the trial and the execution, in case of conviction, should be private.

To check the growth of mob law there must be a public

opinion sufficiently enlightened to recognize the necessity of maintaining order and the justice of securing to every accused person a fair trial by an impartial jury. It is well, moreover, for public officers, from governors to constables, to think more of their duties and less of a reëlection. If such sentiments do not pervade a community, all the worse for such a place; but they may easily be cultivated. The press, the bench, the bar, the pulpit, and the various other creators and guides of public opinion could mould and guide the popular mind in the right direction. Associations in each State, moreover, where mob law is prevalent, might devote themselves to the investigation of crimes of every description and give the widest publication possible to their annual reports. Indeed, there are already many healthy indications of an improved order of things, and it is this growing opposition to "lynch law" in place of the former apologetic and sensitive attitude on the subject which is so full of promise. At the same time there must everywhere be cultivated those sentiments of charity, justice, order, and humanity on which depend the well-being of the human race. Evils are surely to be condemned, and in the task of reform criticism is ever a most effective weapon; but an abiding sense of justice joined to a robust faith in the ultimate triumph of the forces which make for righteousness will, in spite of transient disappointments, accomplish far more than the stake, the halter, and volumes based upon prejudice and unfairness.

In conclusion, we think we have made it clear that the original cause of lynchings was the assaults of which so much has been already written; that now there is no crime which does not in some communities fall within the jurisdiction of Judge Lynch's court; that so far from protecting women, the work of the mob actually results in increasing the number of female victims; and that vengeance enters no longer into any recognized theory of punishment. Society must be protected and the transgressor be made to suffer, but that these results can be accomplished only through the mechanism of governmental organs all history proves to be a fact.

Neither is it necessary to advance any arguments against mob law, for the simple reason that the subject is one beyond the bounds of controversy. That howling gangs of ruffians bent upon shedding human blood can arrogate to themselves the functions exercised by courts and magistrates, or that they can disguise their malevolence by claiming to protect the virtue of helpless women, is monstrous. Statistics prove that more persons are lynched for crimes other than those against women than for such assaults. These murderers will, unless they are promptly dealt with, continue their misdeeds until portions of the South will become human shambles. It is time they were being stopped. The world is astounded by such acts, and asks if this is a civilized country. The direful effects such violent scenes exert upon the rising generation of both races cannot be calculated. Whether we like it or not, it is written in the book of fate that the South must be populated by two races who are to be dependent upon each other. That they must learn to get along with each other is not necessary, for they have been doing so for several centuries. In Jamaica, where the blacks outnumber the whites far more than they do in any part of the South, the lives and honor of men and women are perfectly safe. The same is in like manner true of certain portions of our Southern States situated under similar circumstances. Meanwhile upon the leaders and teachers of the blacks will rest the tremendous responsibility of imparting to that race those lessons of morals and industry without which no race can ascend in the scale of enlightenment. In this work duty and self-interest, to say nothing of other considerations, will admonish the whites to take part. That the negro is improving, moreover, no fair-minded person can gainsay. His advancement in some quarters is simply phenomenal. There is no earthly reason why both races may not go forward. If one of them lags behind, it is bound to pull back the other. Hence, if we of this generation are wise, we will not transmit to succeeding generations a question to vex them perpetually. The only solution of the so-called race problem is one founded on justice.

Let us recapitulate, then, the antidotes for lynch law:

1. There should be created a more efficient system of education.

2. *Preventive* agencies should be substituted for *repressive* ones. A rural police is especially desirable.

3. Judges to be appointed for life and given a proper compensation.

4. The abolition of capital punishment in all cases save those where the prisoner is accused of an assault upon a woman.

5. The recasting of criminal procedure so as to make it less technical. At the same time jurisdiction ought to be conferred upon county courts to try privately persons accused of assaults upon females. Judges of such courts should be authorized to empanel a jury immediately; and if found guilty, the accused should be executed at once and privately. There should be no appeals in such cases.

6. Sheriffs who permit a prisoner to be rescued by a mob for the purpose of lynching him should be removed from office at once, and any person who publicly advocates lynching should be ineligible to any position under the State or Federal government.

7. There should be organized in every State where assaults, lynchings, murders, and other felonies are common an association composed of representative and intelligent citizens, whose duty should be the collection and publication of the circumstances of such crimes. By giving the widest circulation possible to such occurrences a healthier public opinion could be quickly created.

Some such steps as the foregoing are necessary. It is confidently believed, moreover, that their results would prove both efficacious and permanent. A SOUTHERN LAWYER.